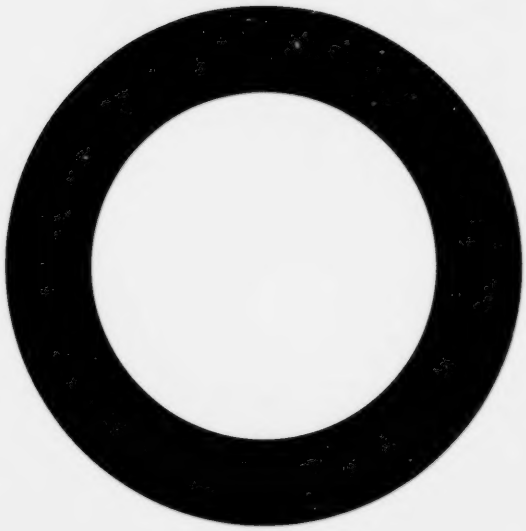

UNITED
NATIONS

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United Nations
Conference
on Trade and
Development

Distr.
GENERAL

TD/B/COM.2/EM.1/2
21 March 1997

Original : ENGLISH

TRADE AND DEVELOPMENT BOARD
Commission on Investment, Technology
and Related Financial Issues
Expert Meeting on Existing Agreements on Investment
and Their Development Dimensions
Geneva, 28-30 May 1997
Item 3 of the provisional agenda

EXAMINE AND REVIEW EXISTING AGREEMENTS ON INVESTMENT AND THEIR DEVELOPMENT DIMENSIONS IN PURSUANCE OF THE MANDATE OF PARAGRAPH 89(b) OF "A PARTNERSHIP FOR GROWTH AND DEVELOPMENT"

Bilateral investment treaties and their relevance to a possible multilateral framework on investment: issues and questions

Note by the UNCTAD secretariat

GE.97-50619

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INTRODUCTION

1. The Commission on Investment, Technology and Related Financial Issues, at its first session (November 1996 and January 1997), decided to convene "a meeting to examine and review existing agreements on investment, taking into account the interests of developing countries, and bearing in mind the work undertaken by other organizations, in pursuance of the mandate of paragraph 89 (b) of 'A Partnership for Growth and Development', to identify and analyse implications for development of issues relevant to a possible multilateral framework on investment".[1]

2. Agreements on investment exist at the bilateral, regional and multilateral levels. Their number has increased steadily over the past half-century (figure 1 and annex table 1). Taken together, they cover a wide range of issues and reflect the changing perceptions and trends in this area.

3. Three recent trends should be noted: the protection of investment, the liberalization of investment frameworks and the promotion of investment. In the area of the protection of investment, efforts are being made to provide investors with assurances and guarantees concerning certain aspects of the treatment of their investments that are of particular importance to them, including commitments in the area of dispute settlement. With regard to liberalization, this process[2] involves: (a) the tempering or removal of restrictions on and conditions for the entry and operations of foreign direct investment (FDI); (b) the establishment of certain standards of treatment for foreign investors; and (c) the strengthening of measures aimed at ensuring the proper functioning of markets, notably through competition policies. A substantial part of the liberalization process takes place through changes in national FDI regimes: during the period 1991-1995, 474 changes out of 485 in the regulatory regimes of 110 countries were in the direction of greater liberalization (table 1). Bilateral, regional and multilateral instruments, however, also play a role in liberalization. Lastly, as regards promotion, an important aspect of many agreements is the establishment of a framework that promotes FDI, although most concrete efforts are undertaken at the national level.

Table 1. Regulatory changes, 1991-1995
(Number)

Item	1991	1992	1993	1994	1995
Number of countries that introduced changes in their investment regimes	35	43	57	49	64
Number of changes	82	79	102	110	112
of which:					
In the direction of liberalization or promotion[a]	80	79	101	108	106
In the direction of control	2	-	1	2	6

Source: UNCTAD, *World Investment Report, 1996: Investment, Trade and International Policy Arrangements* (Geneva: United Nations), United Nations publication, Sales No. E.96.II.A.14, chapter V.

[a] Including measures aimed at strengthening market supervision, as well as incentives.

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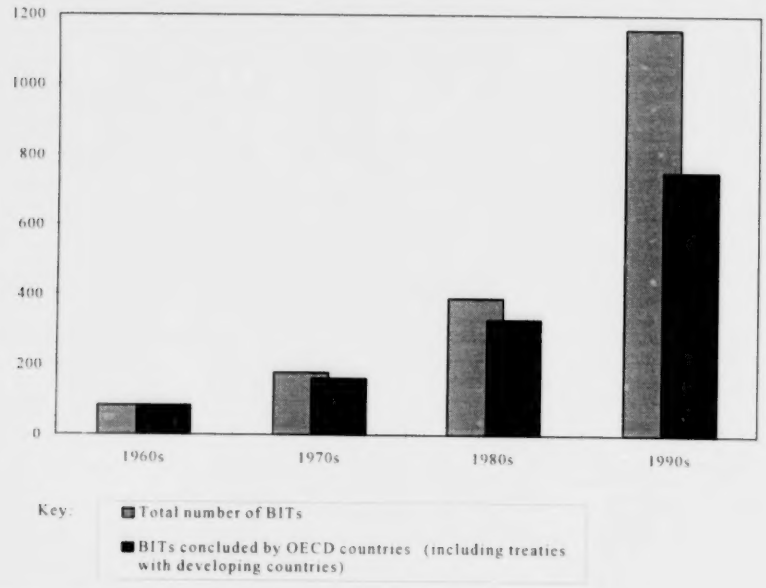
[1] "A Partnership for Growth and Development" (TD/378), para. 89(b).

[2] See UNCTAD, *World Investment Report, 1994: Transnational Corporations, Employment and the Workplace* (Geneva: United Nations), United Nations publication, Sales No. E.94.II.A.14., chapter VII.

Figure 1. Growth in the number of BITs, 1959-1996



Source: UNCTAD database on BITs.

[a] Until June 1996 only.

4. A number of initiatives taken recently have placed FDI issues high on the international economic policy agenda, raising the possibility of increased international cooperation in this area. First, more and more countries are concluding bilateral investment treaties. Secondly, at the regional level, a number of countries in Africa, Asia and the western hemisphere are moving towards a common approach to FDI in their regions, typically in the context of broader economic cooperation efforts. In the OECD, negotiations began in 1995 on a Multilateral Agreement on Investment, with a view to reaching agreement in May 1997. Finally, after the Uruguay Round of Multilateral Trade Negotiations had for the first time directly addressed issues relating to FDI in the context of GATT, the members of the World Trade Organization, at its first ministerial conference (Singapore, 9-13 December 1996), agreed to establish a working group to examine the relationship between trade and investment.

5. As a step towards a broader discussion of issues relevant to a possible multilateral framework on investment (MFI), the present meeting of experts is invited to discuss bilateral treaties for the protection and promotion of foreign investment (also known as bilateral investment treaties (BITs)), as these address issues of relevance to a possible MFI. More specifically, experts may wish to explore (a) the nature and implications of BITs; (b) the range of issues addressed by these treaties; (c) the extent to which the development dimension is taken into account; and, above all, (d) the extent to which issues arising in the context of BITs are relevant, from a development perspective, to a possible MFI.

6. The discussion on BITs could be complemented at a future meeting, if the Commission so decides, by a similar discussion focusing on existing regional and multilateral instruments.

7. To assist the experts, the secretariat has prepared the present note on "Bilateral investment treaties and their relevance to a possible multilateral framework on investment: issues and questions", which draws on a larger study entitled *Bilateral Investment Treaties in the 1990s*, an advance unedited version of which will be available before the meeting upon request. Experts

have been invited to prepare papers on the basis of the issues and questions raised below. The broader context in which the discussions take place is laid out in the *World Investment Report, 1996: Investment, Trade and International Policy Arrangements, Part Three*; and relevant international investment instruments are contained in *International Investment Instruments: A Compendium* (see box for details).

UNCTAD's ongoing work in the area of international investment instruments

The work at the United Nations in the field of FDI and transnational corporations began in the 1970s with the creation of the Commission on Transnational Corporations as a subsidiary body of the Economic and Social Council. Currently, FDI issues are discussed in UNCTAD's Commission on Investment, Technology and Related Financial Issues.

The UNCTAD secretariat, in its analytical and consensus-building capacity, has undertaken a number of tasks with respect to its specific mandate in relation to issues relevant to a possible multilateral framework on investment. In 1995 and 1996, it held two seminars at Divonne, with the purpose of informing delegations in Geneva about FDI trends, issues and policies, and stimulating informal discussions among them on these matters. In addition, the *World Investment Report, 1996: Investment, Trade and International Policy Arrangements* (Sales No. E.96.II.A.14) analysed the evolution and present status of international investment arrangements and examined possible policy approaches and substantive issues of relevance to international frameworks for investment. Later in 1996, the UNCTAD secretariat published *International Investment Instruments: A Compendium* (Sales No. E.96.II.A.9-10-11), a three-volume publication containing the texts of more than 80 instruments, preceded by an analytical essay on international rules for foreign investment. Ongoing work in the area of international investment instruments includes the preparation of a study entitled *Bilateral Investment Treaties in the 1990s* (forthcoming), which surveys over 1,000 treaties to examine recent trends in treaty practice, the similarities and differences between new and old treaties, and their significance, particularly for developing countries. The latter study has provided the basis for the preparation of the present note.

In addition, work has begun on the preparation of a series of technical papers on key issues relevant to a possible multilateral framework on investment, as part of a work programme in this area which

I. SIGNIFICANCE OF BILATERAL INVESTMENT TREATIES

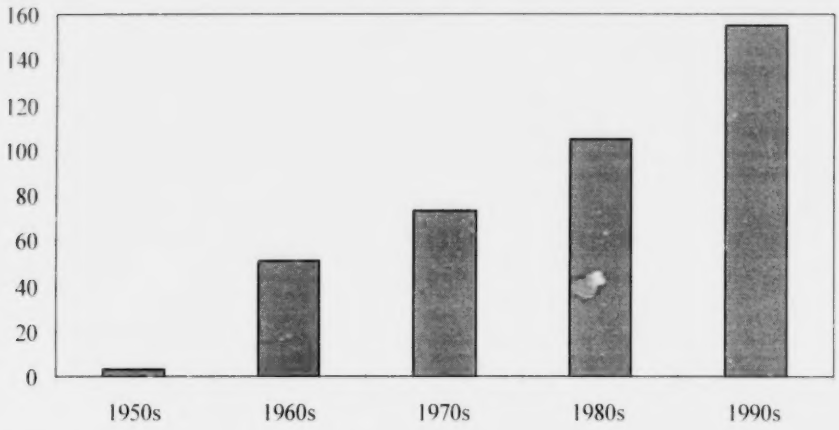
8. There are various reasons why it is appropriate to discuss BITs at this meeting:

- The network of BITs expanded significantly during the first half of the 1990s, the number of such treaties having reached 1,160 in June 1996. Two-thirds of these were concluded during the 1990s alone (figure 1). The number of countries parties to these treaties has also increased in recent years, having reached 158 in June 1996 (figure 2).

- Bilateral investment treaties now enjoy widespread acceptance by countries from all regions. Indeed, these treaties - which were originally concluded almost exclusively between developed and developing countries - are now increasingly being concluded between developing countries and between these countries and economies in

transition, although the great majority are still concluded between home countries that are developed countries and host countries that are developing countries (figure 3).

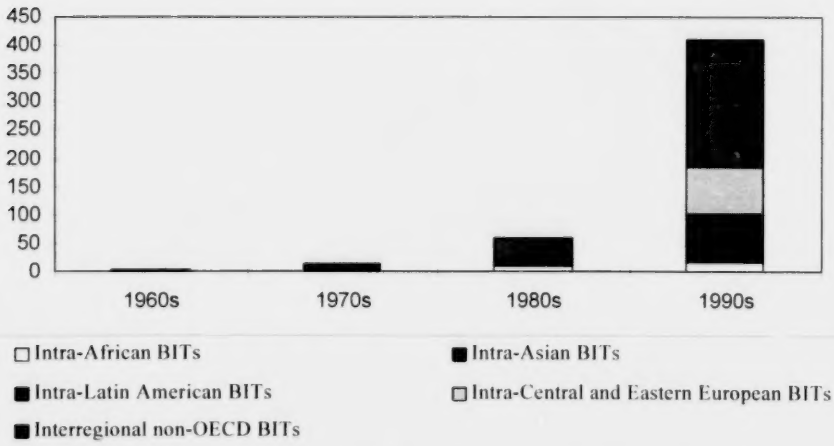
Figure 2. Number of countries that have concluded BITs, 1959-1996[a]



Source: UNCTAD database on BITs.

[a] Until June 1996 only.

Figure 3. Bilateral investment treaties among developing countries and economies in transition, by region, 1960s to 1990s[a]



Source: UNCTAD database on BITs.

[a] Until June 1996 only.

- The substantive rules of customary international law on the treatment and protection of investment, once established in a host country, are rather general, and the procedures for their implementation generally rely on consultations and diplomatic action; they are thus difficult to apply to particular situations. As a result, BITs constitute at present a principal source of substantive and especially procedural rules for the international protection of FDI. The protection issues addressed by BITs are of particular concern to foreign investors.

- Finally, the contents of BITs have played a role as a source of inspiration in negotiations of recent regional and multilateral agreements.

9. There are a number of questions that need to be considered in this respect: Why do many countries conclude BITs, while others do not? What issues do these treaties cover, how are they covered and what are the main similarities and differences in this respect? How are BITs implemented in so far as both protection and promotion are concerned? What role do they play in shaping standards of international law? What impact do BITs have on FDI flows and development, and how can agreements be strengthened from a development perspective? While these questions are important in and by themselves, in each case they should be explored with a possible MFI in mind, as well as the lessons that can be learnt in this respect, which is the perspective of particular relevance to this expert meeting.

II. ISSUES AND QUESTIONS

A. Reasons for concluding bilateral investment treaties

10. The stated purpose of BITs is to protect and promote foreign investment between the contracting countries.

11. The main objective of most capital-exporting countries is to obtain legal protection for investment under international law and thus reduce as much as possible the non-commercial risks facing foreign investors in host countries. The standards of protection in an international agreement are considered to be of a higher and more reliable nature than those provided under domestic law alone, which can be subject to unilateral modification.

12. Capital-importing countries conclude BITs in an effort to attract foreign investment in the interest of development, by protecting it and thereby demonstrating their commitment to providing a favourable investment climate.

13. In as much as investment may flow in both directions, both countries parties to a BIT may pursue these two objectives simultaneously.

14. Despite the dramatic increase in the number of BITs (and while many countries that had been reluctant to negotiate them have now joined in this practice), not every country has concluded BITs, and some countries have concluded only a few (annex table 2).

15. Issues that deserve attention are:

1. What are the main reasons for which individual countries have decided to conclude BITs? Why have certain countries that had never before concluded BITs decided to start this practice now? What are the main reasons for countries that have not concluded BITs to refrain from concluding such treaties?

2. Given the many factors that determine the flow of FDI and the technology and skills associated with it, what is the relative importance of BITs *vis-à-vis* other determinants of investment flows?

3. Given the various national policy tools available to attract FDI, what are the advantages and disadvantages of using BITs versus other national policy instruments in order to influence investment decisions

by transnational corporations? Is there evidence that foreign investors would not consider a host country for investment unless that country had concluded a BIT with their home country?

4.What are the advantages and disadvantages of concluding BITs as compared with concluding regional or multilateral agreements on investment?

5.To what extent are the reasons for concluding BITs, and their advantages and disadvantages, also relevant, from a development perspective, to a possible MFI?

B. Issues addressed by bilateral investment treaties

16. The main characteristic of BITs is that they are exclusively concerned with investment. They cover similar issues, which are few in number. A typical list of the issues in virtually all BITs include the following:

- Preamble
- Scope of application
- Admission of investment
- Promotion of investment
- General standards of treatment
  - Fair and equitable treatment
  - National treatment
  - Most-favoured-nation treatment
- Standards of treatment with regard to specific issues
  - Dispossession of the investor
  - Losses due to armed conflict or internal disorder
  - Transfer of payments and repatriation of capital
  - Operational conditions of investment
  - Subrogation
  - Settlement of disputes

However, not all of these or related issues are addressed in all BITs. There are many exceptions, derogations and reservations, and there are also important differences in the way specific clauses are formulated. Both the similarities and the differences between BITs deserve special attention.

17. Despite the stated purpose of BITs, namely to promote investment flows, most of these treaties contain only general provisions for encouraging the host contracting party to promote flows from the other contracting party (other than through establishing protection standards); and most treaties are silent regarding promotion efforts by the home country.

18. Issues that deserve attention are:

1.Is the list of issues typically covered in a BIT complete in the sense of covering all the most important elements in investment relations from the perspective of development? Does the relative importance of issues vary depending on whether countries look at them from the perspective of a capital-exporting country, a capital-importing country, or from the perspective of both?

2.To what extent has the fact that firms from an increasing number of developing countries are becoming outward investors, and that an increasing number of developing countries conclude BITs with other developing countries, influenced the contents of BITs?

3.What have been the main changes in the contents of BITs concluded by individual countries over time, and why have they occurred?

4.Are there a number of core issues which are dealt with in the same way in most BITs, and if so, why?

5.What are the areas in which most differences among BITs are to be found, and why? To what extent do these differences reflect the needs and positions of particular countries?

6.Bilateral investment treaties are symmetrical in form, i.e. they establish identical rights and obligations for both parties. However, since capital still flows mainly in one direction, it is the host countries, mainly developing countries, that typically assume most obligations. To what extent is this apparent asymmetry in terms of host countries' commitments balanced by the potential benefits of increased investment flows arising from these commitments? Could home countries assume specific obligations regarding the promotion of FDI flows to developing countries? Are there responsibilities for investors, and if so, what are they?

7. The standard definition of investment in many BITs is deliberately broad and open-ended. What are the advantages of a broad definition, and what are the disadvantages? What are the likely implications of including portfolio investment under a BIT in terms of investment protection and, where applicable, in terms of admission of investment?

8.To what extent are the outline of issues covered by BITs, the way these are covered and the similarities and differences among individual BITs relevant, from a development perspective, to a possible MFI?

C. Experience with the application of bilateral investment treaties

19. Although BITs have been in place for many years little systematic information is available about the way in which they are applied and interpreted in specific situations and, above all, about what difference they have made. Countries' experience with the application of BITs could help to clarify the meaning of certain clauses, contribute to a better understanding and assessment of the level of protection afforded by these treaties, and assist in understanding better how effective they have been in promoting investment flows. Therefore, it is in the interest of the contracting parties to ensure that investors and countries know more about how BITs work in specific circumstances.

20. Issues that deserve attention are:

1. To what extent, concretely, have BITs effectively provided additional guarantees for the protection of foreign investment between treaty partners? What are the principal areas in which the existence of treaty protection has been shown to make a difference for foreign investors?

2.Apart from promoting investment through granting legal protection and guarantees, to what extent have BITs led to additional measures aimed at promoting investment flows between treaty countries? What are the most common promotion measures being used in this regard?

3.What has been the experience with respect to investment facilitation under BITs? What is the experience with the application of clauses covering pre-investment (admission) through national treatment or most-favoured-nation treatment?

4.How have the standards of fair and equitable treatment, most-favoured-nation treatment and national treatment been applied under BITs? In what ways do development considerations play a role?

5.To what extent have BITs been mentioned in informal discussions concerning the treatment of particular investments? Do investors ask about a BIT? Do investors and governments consult on the application of a BIT? What are the issues that most often give rise to consultations?

6.What can be learned from court cases involving the application or interpretation of a BIT, and from arbitration awards issued as a result of the operation of the investor-to-State dispute-settlement mechanisms provided for in BITs?

7.What lessons can be learned from the application of BITs that are

relevant, from a development perspective, to a possible MFI?

D. The role of bilateral investment treaties in the development of national law and standards of international law

21. By their very nature, BITs constitute "lex specialis", applicable only between the contracting parties and not to third parties. It has been argued, therefore, that BITs do not create generally applicable international law rules. At the same time, to the extent that these treaties have been concluded in large numbers, cover most countries in all regions of the world and have similar clauses, it has also been argued that BITs may have an influence in shaping and clarifying principles and concepts of international investment law.

22. Issues that deserve attention are:

1.What difference does it make that commitments are negotiated in either a bilateral or multilateral context?

2.On the basis of the elements common to all BITs (discussed in section B above), can core concepts and principles be identified regarding the present approach to FDI in these treaties? If so, what are they and what would be their implications for the status of customary international law with respect to these issues, considering also the differences between negotiations at the bilateral and multilateral levels?

3.Given the many differences in the precise formulation of core concepts and principles in BITs, what are the implications for the status of customary international law with respect to these issues, considering also the differences between negotiations at the bilateral and multilateral levels?

4.To what extent have BITs influenced the investment provisions of regional and multilateral agreements?

5.Do BITs contribute to changes in national legislation? What has been the experience of countries in this respect? What types of changes have been the most common?

6.To what extent can BITs contribute to a better understanding of issues relevant, from a development perspective, to a possible MFI?

E. The development dimension

23. The ultimate objective of BITs from the point of view of developing host countries is to contribute to a favourable investment climate, with a view to attracting more FDI flows and, ultimately, advancing the economic and social development of the host countries involved.

24. Issues that deserve attention are:

1.What is the evidence (systematic or anecdotal) that BITs help to attract FDI flows to developing countries, including the technology and skills associated with FDI?

2.Do the provisions contained in BITs affect the quality of FDI flows that host developing countries receive? What is the evidence in this respect?

3.Do BITs prevent countries from attracting the types of FDI that they consider particularly beneficial for development?

4.Can BITs affect host developing countries' policies and development plans in a manner that inhibits their industrialization and sustainable social and economic development?

5.What are the lessons to be learned from BITs as regards increasing the quantity and quality of investment flows and advancing sustainable social and economic development in host developing countries? Is there room, for example, for provisions giving a role to home countries regarding information, advice and technical assistance; direct financial support and fiscal incentives; insurance against non-commercial risks; and the promotion of technology dissemination and human resource development?

6.What can be learned from the way in which development aspects have been taken into account in the preamble to BITs and in their operational provisions?

7.What does the pattern of exceptions, derogations, reservations and phasing provisions in BITs introduced by developing countries suggest as regards the way in which these countries seek to take into consideration and promote the objective of development?

8.What lessons can be learned for a possible MFI from the manner in which BITs are designed to contribute to increased investment flows and development?

Annex table 1. Main international instruments[a] dealing with FDI, 1948-1996

Year[b]	*Title*	*Setting*	*Level*	*Form*	*Status*
1948	Havana Charter for an International Trade Organization	International Conference on Trade and Employment	Multilateral	Binding	Not ratified
1948	Draft Statutes of the Arbitral Tribunal for Foreign Investment and of the Foreign Investments Court	International Law Association	Non-governmental	Non-binding	Not adopted
1949	International Code of Fair Treatment for Foreign Investments	International Chamber of Commerce	Non-governmental	Non-binding	Adopted
1957	Treaty Establishing the European Economic Community	European Economic Community	Regional	Binding	Adopted
1957	Agreement on Arab Economic Unity	Agreement on Arab Economic Unity	Regional	Binding	Adopted
1958	Convention on the Recognition and Enforcement of Foreign Arbitral Awards	United Nations	Multilateral	Binding	Adopted
1961	Code of Liberalisation of Capital Movements	OECD	Regional	Binding	Adopted
1961	Code of Liberalisation of Current Invisible Operations	OECD	Regional	Binding	Adopted
1962	United Nations General Assembly Resolution 1803 (XVII): Permanent Sovereignty over Natural Resources	United Nations	Multilateral	Non-binding	Adopted
1963	Model Tax Convention on Income and on Capital	OECD	Regional	Non-binding	Adopted
1965	Common Convention on Investments in the States of the Customs and Economic Union of Central Africa	Customs and Economic Union of Central Africa	Regional	Binding	Adopted
1965	Convention on the Settlement of Investment Disputes between States and Nationals of Other States	World Bank	Multilateral	Binding	Adopted
1967	Revised Recommendation of the Council Concerning Co-operation Between Member Countries on Anticompetitive Practices Affecting International Trade	OECD	Regional	Non-binding	Adopted
1967	Draft Convention on the Protection of Foreign Property	OECD	Regional	Non-binding	Not open for signature
1969	Agreement on Andean Subregional Integration	Andean Common Market	Regional	Binding	Adopted

Annex table 1 (continued)

Year[b]	Title	Setting	Level	Form	Status
1970	Agreement on Investment and Free Movement of Arab Capital among Arab Countries	Agreement on Arab Economic Unity	Regional	Binding	Adopted
1970	Decision No. 24 of the Commission of the Cartagena Agreement: Common Regulations Governing Foreign Capital Movement, Trade Marks, Patents, Licenses and Royalties	Andean Subregional Integration Group	Regional	Binding	Superseded
1971	Convention Establishing the Inter-Arab Investment Guarantee Corporation	Inter-Arab Investment Guarantee Corporation	Regional	Binding	Adopted
1972	Joint Convention on the Freedom of Movement of Persons and the Right of Establishment in the Central African Customs and Economic Union	Central African Customs and Economic Union	Regional	Binding	Adopted
1972	Guidelines for International Investment	International Chamber of Commerce	Non-governmental	Non-binding	Adopted
1973	Agreement on the Harmonisation of Fiscal Incentives to Industry	Caribbean Common Market	Regional	Binding	Adopted
1973	Treaty Establishing the Caribbean Community	Caribbean Community	Regional	Binding	Adopted
1974	United Nations General Assembly Resolution 3201 (S-VI): Declaration on the Establishment of a New Inernational Economic Order and United Nations General Assembly Resolution 3202 (S-VI): Programme of Action on the Establishment of a New International Economic Order	United Nations	Multilateral	Non-binding	Adopted
1974	United Nations General Assembly Resolution 3281 (XXIX): Charter of Economic Rights and Duties of States	United Nations	Multilateral	Non-binding	Adopted
1975	Multinational Companies Code in the UDEAC (Customs and Economic Union of Central Africa)	Customs and Economic Union of Central Africa	Regional	Binding	Adopted
1975	Charter of Trade Union Demands for the Legislative Control of Multinational Companies	International Confederation of Free Trade Unions	Non-governmental	Non-binding	Adopted
1975	International Chamber of Commerce Rules of Conciliation and Arbitration	International Chamber of Commerce	Non-governmental	Non-binding	Adopted
1976	Declaration on International Investment and Multinational Enterprises	OECD	Regional	Binding/non-binding	Adopted

Annex table 1 (continued)

Year[b]	*Title*	*Setting*	*Level*	*Form*	*Status*
	Arbitration Rules of the United Nations				
1976	Commission on International Trade Law	United Nations	Multilateral	(Model)	Adopted
1977	ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy	International Labour Office	Multilateral	Non-binding	Adopted
1977	International Chamber of Commerce Recommendations to Combat Extortion and Bribery in Business Transactions	International Chamber of Commerce	Non-governmental	Non-binding	Adopted
1979	Draft International Agreement on Illicit Payments	United Nations	Multilateral	Binding	Not adopted
1979	United Nations Model Double Taxation Convention between Developed and Developing Countries	United Nations	Multilateral	(Model)	Adopted
1980	The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices	United Nations	Multilateral	Non-binding	Adopted
1980	Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data	OECD	Regional	Non-binding	Adopted
1980	Unified Agreement for the Investmentof Arab Capital in the Arab States	League of Arab States	Regional	Binding	Adopted
1980	Treaty Establishing the Latin American Integration Association (LAIA)	LAIA	Regional	Binding	Adopted
1981	International Code of Marketing of Breast-milk Substitutes	World Health Organization	Multilateral	Non-binding	Adopted
1981	Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data	Council of Europe	Regional	Binding	Adopted
1981	Agreement on Promotion, Protection and Guarantee of Investments among Member States of the Organisation of the Islamic Conference	Islamic Conference	Regional	Binding	Adopted
1981	Treaty for the Establishment of the Preferential Trade Area for Eastern and Southern African States	Preferential Trade Area for Eastern and Southern African States	Regional	Binding	No longer in effect
1982	Community Investment Code of the Economic Community of the Great Lakes Countries (CEPGL)	CEPGL	Regional	Binding	Adopted
1983	Draft United Nations Code of Conduct on Transnational Corporations	United Nations	Multilateral	Non-binding	Not adopted
1983	Treaty for the Establishment of the Economic Community of Central African States	Economic Community of Central and African States	Regional	Binding	Adopted

Annex table 1 (continued)

Year[b]	*Title*	*Setting*	*Level*	*Form*	*Status*
1985	Draft International Code of Conduct on the Transfer of Technology	United Nations	Multilateral	Non-binding	Not adopted
1985	United Nations General Assembly Resolution 39/248: Guidelines for Consumer Protection	United Nations	Multilateral	Non-binding	Adopted
1985	Convention Establishing the Multilateral Investment Guarantee Agency	World Bank	Multilateral	Binding	Adopted
1985	Declaration on Transborder Data Flows	OECD	Regional	Non-binding	Adopted
1987	Agreement for the Establishment of a Regime for CARICOM Enterprises	Caribbean Common Market	Regional	Binding	Adopted
1987	Revised Basic Agreement on ASEAN Industrial Joint Ventures	ASEAN	Regional	Binding	Adopted
1987	An Agreement Among the Governments of Brunei Darussalam, the Republic of Indonesia, Malaysia, the Republic of the Philippines, the Republic of Singapore and the Kingdomof Thailand for the Promotion and Protection of Investments	Agreement among the ASEAN countries	Regional	Binding	Adopted
1989	Fourth ACP-EEC Convention of Lomé	ACP-EU	Regional	Binding	Adopted
1990	Criteria for Sustainable Development Management: Towards Environmentally Sustainable Development	United Nations	Multilateral	Non-binding	Adopted
1990	Charter on a Regime of Multinational Industrial Enterprises (MIEs) in the Preferential Trade Area for Eastern and Southern African States	Preferential Trade Area for Eastern and Southern African States	Regional	Binding	Adopted
1991	Decision 291 of the Commission of the Cartagena Agreement: Common Code for the Treatment of Foreign Capital and on Trademarks, Patents, Licenses and Royalties	Andean Subregional Integration Group	Regional	Binding	Adopted
1991	Decision 292 of the Commission of the Cartagena Agreement: Uniform Code on Andean Multinational Enterprises	Andean Subregional Integration Group	Regional	Binding	Adopted
1991	The Business Charter for Sustainable Development: Principles for Environmental Management	International Chamber of Commerce	Non-governmental	Non-binding	Adopted
1992	Guidelines on the Treatment of Foreign Direct Investment	World Bank	Multilateral	Non-binding	Adopted
1992	Articles of Agreement of the Islamic Corporation for the Insurance of Investment and Export Credit	Islamic Conference	Regional	Binding	Adopted
1992	North American Free Trade Agreement	Canada, Mexico and United States	Regional	Binding	Adopted

Annex table 1 (continued)

Year[b]	*Title*	*Setting*	*Level*	*Form*	*Status*
1992	CERES Principles	CERES	Non-governmental	Non-binding	Adopted
1993	Permanent Court of Arbitration Optional Rules for Arbitrating Disputes between Two Parties of which only One is a State	Permanent Court of Arbitration	Multilateral	Binding	Adopted
1993	Treaty Establishing the Common Market for Eastern and Southern Africa	Common Market for Eastern and Southern Africa	Regional	Binding	Adopted
1994	Marrakesh Agreement Establishing the World Trade Organization. Annex 1A: Multilateral Agreements on Trade in Goods. Agreement on Trade-Related Investment Measures	World Trade Organization	Multilateral	Binding	Adopted
1994	Marrakesh Agreement Establishing the World Trade Organization. Annex 1B: General Agreement on Trade in Services and Ministerial Decisions Relating to the General Agreement on Trade in Services	World Trade Organization	Multilateral	Binding	Adopted
1994	Marrakesh Agreement Establishing the World Trade Organization. Annex 1C: Agreement on Trade-Related Aspects of Intellectual Property Rights	World Trade Organization	Multilateral	Binding	Adopted
1994	Protocol of Colonia for the Reciprocal Promotion and Protection of Investments in the MERCOSUR (Intra-zona)	MERCOSUR	Regional	Binding	Adopted
1994	Recommendation of the Council on Bribery in International Business Transactions	OECD	Regional	Non-binding	Adopted
1994	Protocol on Promotion and Protection of Investments from States not Parties to MERCOSUR	MERCOSUR	Regional	Binding	Adopted
1994	APEC Non-Binding Investment Principles	APEC	Regional	Non-binding	Adopted
1994	Energy Charter Treaty	European Energy Charter Conference	Regional	Binding	Provisional application
1995	Consumer Charter for Global Business	Consumers International	Non-governmental	Non-binding	Adopted
1995	Pacific Basin Charter on International Investments	Pacific Basin Economic Council	Non-governmental	Non-binding	Adopted

Source: UNCTAD, *World Investment Report, 1996: Investment, Trade and International Policy Arrangements* (Geneva: United Nations), United Nations publication, Sales No. E.96.II.A.14, chapter V. The instruments listed here are reproduced in whole or in part in the source publication.

[a] Bilateral investment treaties and directives of the European Union are not included in the table.

[b] Dates given relate to original ratification. Subsequent revisions of instruments are not included.

[c] The OECD Declaration on International Investment and Multinational Enterprises is a political undertaking supported by legally binding Decisions of the Council. The Guidelines on Multinational Enterprises are non-binding standards.

Annex table 2. Countries and territories that have concluded bilateral investment treaties

Countries and territories	Developed countries				Developing countries		Central and Eastern European countries
	Western Europe	United States	Japan	Other developed countries	Within their region	Outside their region	
Albania	10	1	-	-	-	6	7
Algeria	5	-	-	-	-	-	-
Antigua and Barbuda	1	-	-	-	-	-	-
Argentina	13	1	-	3	7	5	7
Armenia	4	1	-	-	1	4	2
Australia	-	-	-	-	-	9	5
Austria	-	-	-	-	-	9	7
Azerbaijan	2	-	-	-	-	2	-
Bahrain	1	-	-	-	-	-	-
Bangladesh	6	1	-	-	4	-	1
Barbados	3	-	-	-	2	-	-
Belarus	8	1	-	-	-	4	5
Belgium and Luxembourg	-	-	-	-	-	28	11
Belize	1	-	-	-	-	-	-
Benin	3	-	-	-	4	-	-
Bolivia	10	-	-	-	5	1	1
Bosnia and Herzegovina	-	-	-	-	-	-	1
Brazil	8	-	-	-	2	1	-
Bulgaria	15	1	-	-	-	6	11
Burkina Faso	1	-	-	-	1	-	-
Burundi	3	-	-	-	-	-	-
Cambodia	-	-	-	-	-	-	-
Cameroon	5	1	-	-	-	-	1
Canada	-	-	-	-	-	4	6
Cape Verde	5	-	-	-	-	-	-
Central African Republic	3	-	-	-	-	-	-
Chad	4	-	-	-	-	-	-
Chile	11				7	4	3
China	16	-	1	3	16	12	24
Colombia	2	-	-	-	2	-	-
Congo	5	1	-	-	-	-	-
Costa Rica	4	-	-	-	-	-	-
Côte d'Ivoire	7	-	-	-	-	-	-
Croatia	1	-	-	-	-	5	7
Cuba	3	-	-	-	5	3	3
Cyprus	2	1	-	-	-	-	5
Czechoslovakia[a]	13	1	-	2	-	4	-
Czech Republic	2	-	-	1	-	9	13

Annex table 2 (continued)

Countries and territories	Developed countries				Developing countries		Central and Eastern European countries
	Western Europe	United States	Japan	Other developed countries	Within their region	Outside their region	
Denmark	-	-	-	-	-	22	13
Dominica	2	-	-	-	-	-	-
Dominican Republic	2	-	-	-	-	-	-
Ecuador	4	1		1	6	2	2
Egypt	12	1	1	-	9	6	9
El Salvador	3	-	-	-	1	-	-
Equatorial Guinea	1	-	-	-	-	-	-
Estonia	11	1	-	1	-	1	5
Ethiopia	2	-	-	-	-	-	-
Finland	-	-	-	-	-	15	14
France	-	-	-	2	-	52	19
Gabon	5	-	-	-	1	-	1
Gambia	1	-	-	-	-	-	-
Georgia	4	1	-	1	3	-	1
Germany	2	-	-	2	-	79	20
Ghana	5	-	-	-	-	1	2
Greece	1				1	6	11
Grenada	1	1	-	-	-	-	-
Guinea	3	-	-	-	1	-	-
Guinea-Bissau	1	-	-	-	-	-	-
Guyana	2	-	-	-	-	-	-
Haiti	3	1	-	-	-	-	-
Honduras	4	1	-	-	-	-	-
Hong Kong	7	-	-	2	-	-	-
Hungary	15	-	-	3	2	13	10
Iceland	1	-	-	-	-	-	-
India	5	-	-	2	2	-	3
Indonesia	13	-	-	1	6	2	5
Iran (Islamic	1				3	-	8
Iraq	-	-	-	-	1	1	-
Israel	2				1	3	9
Italy	-	-	-	-	1	33	11
Jamaica	6	1	-	-	1	1	-
Japan	-	-	-	-	2	2	-
Jordan	4	-	-	-	1	-	1
Kazakstan	7	1	-	1	5	1	2
Kenya	1	-	-	-	-	-	-
Kuwait	4	-	-	-	6	3	7
Kyrgyzstan	2	1	-	-	2	-	-

Annex table 2 (continued)

Countries and territories	Developed countries				Developing countries		Central and Eastern European countries
	Western Europe	United States	Japan	Other developed countries	Within their region	Outside their region	
Lao People's Democratic	2	-	-	1	4	-	-
Latvia	14	1	-	2	-	2	4
Lebanon	1	-	-	-	-	1	2
Lesotho	2	-	-	-	-	-	-
Liberia	4	-	-	-	-	-	-
Libyan Arab Jamahiriya	-	-	-	-	4	-	-
Lithuania	10	1	-	-	-	4	5
Madagascar	5	-	-	-	-	-	-
Malawi	1	-	-	-	-	-	-
Malaysia	13	-	-	-	8	3	5
Mali	2	-	-	-	1	-	-
Malta	7	-	-	-	-	2	1
Mauritania	3	-	-	-	1	-	1
Mauritius	3	-	-	-	-	-	-
Mexico	2	-	-	-	-	-	-
Mongolia	7	1	-	-	4	-	5
Morocco	13	1	-	-	4	4	3
Namibia	2	-	-	-	-	-	-
Nepal	3	-	-	-	-	-	-
Netherlands	-	-	-	1	1	40	14
New Zealand	-	-	-	-	-	2	-
Nicaragua	2	1	-	-	-	-	-
Niger	2	-	-	-	1	-	-
Nigeria	3	-	-	-	-	-	-
Norway	-	-	-	-	-	7	8
Oman	6	-	-	-	1	2	-
Pakistan	7				6	-	4
Panama	4	1	-	-	-	-	-
Papua New Guinea	3	-	-	-	-	1	-
Paraguay	9	-	-	-	3	2	2
Peru	12	-	-	1	5	4	2
Philippines	5	-	-	2	5	1	2
Poland	15	1	-	3	-	16	16
Portugal	1	-	-	-	-	12	9
Republic of	14	-	-	1	13	8	8
Republic of	5	1	-	-	-	4	5
Romania	18	1	-	2	-	37	16
Russian	5	1	-	-	-	7	7
Rwanda	3	-	-	-	-	-	-

Annex table 2 (continued)

Countries and territories	Developed countries				Developing countries		Central and Eastern European countries
	Western Europe	United States	Japan	Other developed countries	Within their region	Outside their region	
Saint Lucia	2	-	-	-	-	-	-
Saint Vincent the	1	-	-	-	-	-	-
Saudi Arabia	1	-	-	-	2	-	-
Senegal	6	1	-	-	1	2	1
Sierra Leone	2	-	-	-	-	-	-
Singapore	6	-	-	-	7	-	2
Slovakia	1	-	-	-	-	1	13
Slovenia	3	-	-	-	-	1	4
Somalia	1	-	-	-	-	-	-
South Africa	5	-	-	-	-	3	-
Spain	-	-	-	-	-	27	9
Sri Lanka	11	1	1	-	5	1	1
Sudan	4	-	-	-	1	-	1
Swaziland	2	-	-	-	-	-	-
Sweden	-	-	-	-	-	21	12
Switzerland	-	-	-	1	-	58	16
Syrian Arab Republic	3	-	-	-	-	-	-
Taiwan of China	-	-	-	-	1	1	1
Tajikistan	-	-	-	-	6	-	2
Tanzania	4	-	-	-	-	-	-
Thailand	5	-	-	-	8	1	5
The former Yugoslav of Macedonia	-	-	-	-	1	1	1
Togo	2	-	-	-	1	-	-
Trinidad and	2	1	-	-	-	-	-
Tunisia	11	1	-	-	13	6	4
Turkey	10	1	1	1	6	2	18
Turkmenistan	2	-	-	1	6	1	2
Uganda	3	-	-	-	-	1	-
Ukraine	11	1	-	1		9	9
United Arab Emirates	3	-	-	-	5	-	3
United	-	-	-	1	2	61	21
United States	-	-	-	-	-	20	17
Uruguay	8	-	-	1	-	1	3
USSR[a]	11	-	-	1	-	3	-
Uzbekistan	7	1	-	-	3	1	3
Venezuela	7	-	-	-	6	-	2

Annex table 2 (continued)

Countries and territories	Developed countries				Developing countries		Central and Eastern European countries
	Western Europe	United States	Japan	Other developed countries	Within their region	Outside their region	
Viet Nam	9	-	-	1	7	1	6
Yemen	5	-	-	-	1	1	-
Yugoslavia	5	-	-	-	-	2	5
Zaire	5	1	-	-	-	1	-
Zambia	2	-	-	-	-	-	-
Zimbabwe	3	-	-	-	-	-	-

Source : UNCTAD, database on BITs.

Note :

WesternEurope : European Union countries, Iceland, Norway and Switzerland.

Other developed: Canada, Australia, Israel, New Zealand and South Africa.

Developing country regions: Africa, Latin America and the Caribbean, Asia (West Asia, Central Asia and South, East and South-East Asia) and the Pacific.

[a] The Czech Republic and the Slovak Republic have upheld all bilateral treaties for the promotion and protection of FDI concluded by Czechoslovakia.

[b] All international obligations undertaken by the USSR have been assumed by the successor States.